THE NEUTRALITY OF BELGIUM

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PERPETUAL neutralization is the condition of a State for ever removed and protected from all hostilities. After a sketchy attempt to apply neutralization to the Island of Malta, the legal notion of perpetual neutralization made its appearance in history in 1815. At this date Switzerland was neutralized. In 1831 came Belgium's turn; in 1867, that of Luxembourg; in 1885, that of the Congo Free State. The perpetually neutral State renounces the right to make war, and, in consequence, the right to contract alliances, even purely defensive ones, because they would drag it into a war to succor an ally or would place it in a situation of political dependence toward such an ally if the neutral State's ally should promise it succor without exacting reciprocity. All danger, then, of aggression on the part of the neutral State being avoided in this manner, the neutral State obtains in return from other States their promises to refrain from attacking it. This is the essential difference between temporary neutrality and perpetual neutrality. When two States declare war on each other, other States may at their will participate or not in the war, just as each of the belligerents may if it will implicate them in it; neutrality, then, is nothing but a precarious régime, since it is at the mercy, either of the neutral State or of one of the belligerents to end at any instant. Hence simple neutrality has been designated as temporary neutrality. On the other hand, a perpetually neutral State, Switzerland, Belgium, or Luxembourg, is legally restrained when a war breaks out, from taking part in it. But again, none of the belligerents may involve the perpetually neutral State in the consequences of the war, consequences which include the passage through its territory, without which prohibition one of the belligerents, menaced by the advent of the enemy, would naturally be led

to go to meet its enemy on neutral ground, which would be sure to provoke a battle exactly where it should be avoided.

The neutralized State, assured of never being, either directly or indirectly, implicated in a war, sees opening before it, if it remains peaceful and loyal, the hope of a peace guaranteed by law.

Noble thinkers, desirous of restraining war by every means, have asked themselves if precisely this perpetual neutrality, developed from country to country, does not contain in it the surest means of bringing about, through a continual progress, the reign of peace among nations. The Interparliamentary Peace Union turned its efforts to this purpose, while many minds in Holland, in Denmark, in Sweden, and in Norway were getting their bearings in that direction. In order to facilitate the passing of the European States from temporary neutrality to perpetual neutrality the Russian jurist, De Martens, had ingeniously developed the opinion that perpetual neutrality which, up to the present moment has always been the result of an agreement between the neutral State and other Powers, could, and from now on should, come into effect by a simple one-sided proclamation of the State that is a candidate for neutrality. On the other hand, jurists of neutral countries, such as Nys of Belgium, have endeavored to relax as much as possible the rigor of the conditions which perpetual neutrality imposes upon the sovereignty of a State. While the perpetually neutral State is incapable of concluding a customs union with a State not perpetually neutral (for a customs union leads to political union), one might foresee a possibility of its entering into a customs union with a neighboring State that was also neutralized, a fact which from the beginning relieves the economic union of all political intent or effect.

It was then possible to found the greatest hopes on the régime of perpetual neutrality, made wisely supple enough not to interfere with economic expansion. But in order that political régimes instituted as a result of juridical speculation may be defined, strengthened, and extended, they must be capable of sustaining the test of time. A system created to put a check to war cannot be judged, except in the course of a war. In 1870 the rigorously respected neutrality of Switzerland, Belgium, and Luxembourg was successful in localizing hostilities. But at that time there did not yet exist the barrier of forts between

France and Germany which, by making the attack difficult, has led the aggressor to invade neutral territory; for beyond, thanks to the confidence reposed in treaties, he knew he should find no barrier but that of a rampart of living men. So in considering the future of perpetual neutrality after the inconclusive precedent of 1870, it was the terrible eventuality of a Franco-German war which must be regarded as the decisive proof to settle the value of the institution.

The proof has come; it has surpassed all expectations, even the most pessimistic.

Germany has violated not only the neutrality of Luxembourg, which she had recognized and guaranteed, but that of Belgium, also recognized and guaranteed by her. Not only has she not held herself bound by the treaties she had formally signed, but she has shown the most singular misunderstanding of the substance even of these treaties. She proposed to Belgium to allow her troops to pass through her territory peacefully, offering to pay for all service demanded and given, first to the inhabitants, and then to the nation. That was acting as if neutrality were created in the exclusive interest of the neutralized nation, by virtue of a separate contract with each of the Powers who have recognized and guaranteed its neutrality. Just the contrary is the case; the neutrality which results not from a particular contract with each of the Powers, but from a collective contract with all of neighboring or interested States, possible belligerents, is a régime which, born of the will of several Powers in the common interest of the neutral State and of these Powers, cannot, legally, be done away with, except by their common agreement. Belgian neutrality, sprung from the treaties of 1831 and of 1839, without being, like that of Switzerland, desired by the neutralized nation herself, had been made the condition upon which she was given her independence. After the Powers had, in 1815, reunited Belgium and Holland to form the kingdom of the Netherlands as a barrier to French expansion, they had allowed Belgium to break away and weaken this barrier only on the condition that she herself should constitute another rampart—that of neutrality. Belgium did not, like Switzerland, of her own accord ask for this neutrality; she was obliged to resign herself to accepting against her will; it was for her the price of her independence—the ransom

of her liberty. Such being the origin of this neutrality, imposed upon Belgium, not in her own interest, but to protect European peace, how then could Germany make offers to Belgium to renounce in her favor a situation due not exclusively to the idea of protecting Belgian interests, but to the maintenance of European peace? Furthermore, to demand of Belgium to allow the German troops to pass through Belgian territory was not only contrary to perpetual neutrality, it was contrary to temporary neutrality. The Hague Convention of October 18, 1907, on the rights and duties of neutral States, signed by Germany and Belgium, is explicit on this point: "Art. 1. The territory of neutral Powers is inviolable. Art. 2. Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power. Art. 5. A neutral Power must not allow any of the acts referred to in Articles 2 and 4 to occur on its territory."

If Belgium's neutrality had been a simple neutrality, purely voluntary, ephemeral, and optional for the neutral State and the other Powers as that of Denmark or Holland, even then Germany could not have demanded of her the passage of her troops, convoys, or munitions, without inviting her to be false to her obligations. Does not such an act imply not only the contempt of perpetual neutrality, but of temporary neutrality as well? To ask passage of her troops was for Germany to associate Belgium with her in the war, to expose her, in the improbable case of her assenting, to a just punishment by the Powers for such treason to her duties. For the Powers, by recognizing her neutrality, had not only the right but the duty to force her to respect it. If the neutrality of Belgium had been temporary, Germany could not, without forcing her to enter into an alliance with her, have demanded passage; such a concession would have been on the part of the neutral State an act of belligerence. Now, alliances cannot be forced. Even if Belgian neutrality had been temporary, Germany could have obtained from Belgium the right of passage only by forcing her to depart from her neutrality. When Belgium refused to accede to Germany's demand, Germany, who declared that she had no hostile intentions toward her, should then have rigidly abstained from action. All the more should she have abstained from asking Belgium

to violate her neutrality, since it was she who had expressly recognized it, and not only recognized—which obliged her to respect it—but guaranteed it as well, being thus constrained to make it respected by others. So then, when Belgium refused, she was under the strongest obligations to stop short. This was not what happened. No violation of neutrality can be imagined more concrete, more complete, more certain, more disdainful of the institution, more offensive, not only to the independence, but to the honor, of the neutral State than that with which the guardian of this neutrality punished the refusal to betray at her command the most express and well-defined obligations.

In vain can the juridical casuist search, not for a justification, but for an extenuation even, of such an act. In recognizing officially that the neutrality of Belgium had been violated, the German Chancellor thought to bring forward the excuse of necessity—that is to say, the necessity of legitimate defense. Not recent is the philosophy dear to Prussian militarism—which, according to Hegel and Treitschke, places the power of the State above law, morals, and even honor. Without doubt it affirms that the State is never bound by an obligation to respect that which would prove a danger to its security. But Belgium's neutrality could not imperil Germany, since its end and effect was precisely to prevent France from surprising by a flank attack the line of German fortresses. What Belgian neutrality did paralyze was not the German defense, but German *aggression*. It is true that Treitschke and Bernhardi would have us believe the State should preserve intact, not only its powers of defense, but its powers of offense. Nevertheless, this doctrine, menacing alike to the security of weak States and the peace of strong but pacific States, is but a monstrous aberration. To assert that Germany had the right to disregard Belgian neutrality means that Germany had the right to declare war on Belgium, to invade it, to occupy it, to annex it. Such acts may perchance be possible in the higher domain of actual politics; they cannot be justifiable in the realm of justice. Even in order that it may live, a people has no more right to sacrifice another inoffensive people than a man has to kill another innocent man in order that he himself may live. In vain Bernhardi, whose writings were not only a prophecy, but a programme, has declared, that Belgium ceased to be a neutral State by annexing, contrary

to the obligations of neutrality, the colony of the Congo. He would have it when, in 1885, the Powers recognized the independence of the Congo Free State under the sovereignty of the King of the Belgians. They permitted Belgium indirectly to indulge in colonial activity, so that the change from the Congo Free State to a Belgian Colony—the mere regularization of an act into a right—could not astonish them; moreover, if it were contrary to the condition of a neutral State to possess a colony, the guarantors of this neutrality should have warned her in regard to it, which Germany assuredly did not do; finally, the consequence of this point of view would have been that the Congo would have ceased to be Belgian, and not that Belgium would have ceased to be a neutral State.

Moreover, the reasoning of Bernhardi has not been sustained by any one. Professor Burgess contented himself in the New York *Times* of October 28, 1914, with pretending that

> between 1872 and 1914 Belgium became what is now termed a World Power; that is, it reached a population of nearly 9,000,000 people, it had a well-organized, well-equipped army of over 200,000 men and powerful fortifications for its own defense; it had acquired and was holding colonies covering 1,000,000 square miles of territory, inhabited by 15,000,000 men, and it had active commerce, mediated by its own marine, with many, if not all, parts of the world. Now, these things are not at all compatible in principle with a specially guaranteed neutrality of the State which possesses them. The State which possesses them has grown out of its swaddling-clothes, has arrived at the age and condition of maturity and self-protection, and has passed the age when specially guaranteed neutrality is natural.

To reason thus, is to forget that the neutrality of Belgium, like all other neutralities (but this more than all the others) was created in the interest, not only of the neutralized State, but of peace. If, as Professor Burgess states, Belgium had become sufficiently strong to make her independence respected against any hostile enterprise of France, how could Germany declare to Belgium that she could not trust to her to defend her against a possible French attack? As for insinuating that Belgium had allied herself with France and England, that was to offer to the Belgian nation and government the most gratuitous of insults. Finally, to pretend that if Germany had not taken the first step in penetrating Belgian territory, France would have preceded her, is first to forget that French mobilization,

slower than German mobilization, would not permit France to get ahead of Germany; second, that to the direct question which Belgium addressed simultaneously to France and Germany, France alone and without delay declared expressly that, faithful to her treaties, she would abstain from any act contrary to this neutrality.

Professor Burgess has doubts, too, not only of the guaranty, but of the recognition by Germany of Belgian neutrality. The treaty by which (May 11, 1839) the German Confederation recognized and guaranteed Belgian neutrality, according to him, could no longer in 1867 bind the North German Confederation, which, by the exclusion of Austria, was substituted for the preceding one, and consequently could not bind the German Empire. No German jurist had ever doubted that the recognition and the guaranty of Belgium were included among the conventional obligations of the German Empire. It is true that in 1870 special agreements took place between England, on one hand, and France and Germany, on the other, to assure the neutrality of Belgium during the war. But no one would pretend that at the expiration of this treaty in 1872 the neutrality of Belgium ceased to be recognized and guaranteed; for the treaty of 1870, whose object was to enforce and practically to assure the complete execution of the pledges made in 1839, could not have as a result the weakening of it. By the treaties of 1870 England promised, equally to France and to Prussia, to join her arms to those of either one or the other of these Powers if her adversary should enter Belgian territory. In 1867 England had declared that in her opinion, in the case of a collective guaranty, each of the guarantors was released from his obligations the instant a single one of them was faithless to her obligation. In 1870 she pointed out to France and to Prussia, co-guarantors, but possible transgressors of Belgian neutrality, that under such a circumstance she would not hesitate to take up arms, thus making the military assistance of the guarantor no longer voluntary, but obligatory. Such being the sense of the treaty of 1870, it is not possible to accept the interpretation which Professor Burgess gives to it. Finally, the treaty of 1839, signed by Prussia and Austria, should have been observed by one of the two and her observance assured by the other, even when the substitution for the German Confederation of the North German Confederation, and later of the German Em-

pire, had transmitted to each of the new bodies of German Federation the obligation which the first of these had expressly affirmed, May 11, 1839.

No doubt can exist of the violation of Belgian neutrality, expressly recognized by M. von Bethmann-Holweg. The German armies in crossing the Belgian frontier dared openly to make the directest and gravest attack against the law of nations ever recorded by history.

But while Luxembourg, deprived by Treaty of London (May 13, 1867) of the power to maintain an army, could not dream of defending herself against such a violation of law, Belgium, in spite of the disproportion of the forces, was in a position to resist. The forts of Liège and Namur—the work of General Brialmont—allowed her, if not to stop, at least to halt the march of the invader, while the two nearest guarantors of her neutrality, England and France, exerted themselves to come up to her assistance; her army, recruited by voluntary enlistments, permitted her to make the defense of her independence a truly national work. Faithful to her word, when Germany, after having recognized and guaranteed the neutrality which she transgressed, showed herself twice faithless to her word, the courage of Belgian people rose to the height of its duty. But this resistance only excited the resentment of the aggressor. Witness Louvain's University destroyed; Malines twice bombarded, although she was without defenses or without inhabitants; witness the murder of peaceful citizens taken as hostages—making Belgium pay dearly for the defense of her neutrality.

In vain, to excuse these new crimes, time-serving arguments would pretend that such acts were the just punishment of a civil population which, enraged with hatred of the invader, did not hesitate to take up arms such as the laws of war disdain. This explanation, frequently advanced for Germany's justification, even if we suppose it founded on fact, cannot be admitted in law. Indeed, the convention adopted at the Hague Convention, October 18, 1907, a convention signed by both Belgium and Germany states: "Article 50. No collective penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible." The principle that every penalty is personal should be applied to every punishment, whether military or

not. But, besides that, it would be an error to consider that in firing upon the invader civilians were acting contrary to law. According to Article 2 of the regulations concerning the laws and customs of war on land, adopted by the Hague Convention, October 18, 1907—" The inhabitants of a territory not under occupation, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly, and if they respect the laws and customs of war." Even if the inhabitants did not carry arms openly, even if they did not respect the laws of war, the aggressor could not lawfully reproach them with this, for under the terms of the Convention, signed by Germany, October 18, 1907, on the rights and duties of neutrals, Article 10 says: " The fact of a neutral Power, resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act." The violating of neutrality does not put the neutral State in a state of war, but in a state of defense. In vain did Germany take care to declare war on Belgium; Belgium was not thereby placed in a state of war with Germany, for war is a legal situation, while the aggressive act of a State against which another had refrained from declaring war can only be a war *de facto*. Just as a man, face to face with a criminal, who has attacked him in the street does not need to observe the laws of dueling, even if in the present instance it could be proved—a proof which is legally impossible—that Belgium had in the zeal of her defense, failed to observe the rules of the laws of war, it might still be asserted that, under the present circumstances, she was not obliged to respect them. Such a reflection is a matter of grave import.

In addition to showing the fragility of the most strongly guaranteed neutralities, the cruel history of Belgian neutrality shows likewise the danger to a people of neutrality resting, not only by guarantees, but on the people itself. If neutrality does not exempt the neutral State from fortifying herself in time of peace nor from taking up arms in time of war; if the final consequence of this régime is simply to increase, by his surprise at an unexpected resistance, the exasperation of an enemy, who then carries out his crime with all the fury of his remorse, how then can a nation contemplate the thought not of becoming a neutral State, but even

of simply remaining one? And how if, at the expiration of the great war, Belgium, reinstated in her rights, should wish to be rid of her neutrality, could the Powers refuse to accede to her desire?

If such were to be the case, the experience of the war would be exactly contrary to the institution of neutrality which, condemned henceforth by experience, would have to be erased from history. Such a conclusion cannot be admitted. However quickly it comes into the mind, it must be ejected from it still more promptly and surely. If Belgium, her frontiers invaded simultaneously by two belligerents, had not been supported by either of these guarantors, then without doubt it might be said that the institution of perpetual neutrality had seen its day. Luckily, such is not the case. If Germany had had the same regard for right which France showed, Belgium would be at this moment happy and prosperous. While Germany forgot her promises, so far as to ignore the neutrality which she had not only recognized, but guaranteed, England did not hesitate to shoulder all her responsibilities. And the fury of the Imperial Chancellor when he learned that England still heeded " the scrap of paper " awakens the idea that if she had foreseen this possibility Germany would surely have halted before violating Belgian neutrality; the fear of the guarantor had been for her the beginning of wisdom. If Belgium is now suffering more than any people has ever suffered, it does not mean that in the mass of legal institutions that of neutrality is particularly fragile or more particularly imperfect, but that international law is at this moment too weak to resist the audacious onslaught of those Powers whose military pride has perverted their sense of right and whose devouring ambition has corrupted their sense of justice.

Belgium's cruel experience need not divert the hopes of the pacifists from the organization of neutralized States. It ought rather lead the nations to the widening of the system of the recognition and guarantees of neutrality. At this moment international law holds that two neutral States may not ally themselves together for the defense of their neutrality. It is a principle that a perpetually neutral State can only recognize, not guarantee, the neutrality of another State; this is the case of Belgium in relation to Luxembourg. After the war we shall have to see if this doctrine be not too narrow; if, in order to make neutrality an institution which

will be a real protection of national independence and the generator of world peace, it is not the time to permit to perpetually neutral States—the only guarantors of neutrality of whose disinterestedness it is possible to be absolutely certain—to guarantee one another mutually: the alliance, the real union of two neutralized States would then become possible. Neutralized Holland could conclude with Belgium, under the form of a reciprocal guaranty, the treaty of alliance which in the present state of the legal doctrine is forbidden her. Scandinavian neutrality could, understood in this manner, uphold that of Belgium and Holland; the neutrality of Switzerland, which geographically linked with that of Holland by a chain of other neutral States, could also enter into this system of reciprocal guarantees. Finally, the peace of the world requires that the numbers of the guarantors of neutralized States be increased. Every nation that is truly pacific and strong ought to feel that its duties toward peace and law increase by reason of its power and authority in the world. If the United States had guaranteed the neutrality of Belgium, is there to be found in all her boundaries one man who believes that in the present instance it would not now be respected?

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